

BRB No. 97-1635

WILL I. GREGORY)	
)	
Claimant-Petitioner)	DATE ISSUED:
)	
v.)	
)	
INGALLS SHIPBUILDING,)	
INCORPORATED)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Ainsworth H. Brown, Administrative Law Judge, United States Department of Labor.

Jay A. York, Mobile, Alabama, for claimant.

Donald P. Moore (Franke, Rainey & Salloum, PLLC), Gulfport, Mississippi, for self-insured employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (96-LHC-02425) of Administrative Law Judge Ainsworth H. Brown rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

On October 18, 1993, claimant, a shipfitter, injured his right wrist after he slipped and fell on a deck of a ship while working for employer. Claimant had carpal tunnel release surgery in January 1995, and he returned to light duty work in February 1995. Claimant worked in a light duty capacity until May 10, 1995, when he was laid off because such work was no longer available. Subsequently, claimant

returned to unrestricted regular duty on July 17, 1995. Employer voluntarily paid claimant temporary total disability benefits from January 18 - February 21, 1995, May 10 - 25, 1995, on May 9, 1996, and from June 3 - 11, 1996. Employer additionally paid claimant benefits for a two percent permanent partial disability to the right hand. Claimant sought additional temporary total disability benefits from May 26, 1995, through July 16, 1995, as Dr. McGinley had not released him to return to unrestricted work and there was no light duty work available during this period. The administrative law judge denied claimant's claim.

On appeal, claimant appeals the administrative law judge's denial of temporary total disability benefits from May 26, 1995, through July 16, 1995. Employer responds in support of the administrative law judge's denial of benefits.

After consideration of claimant's arguments on appeal and the administrative law judge's decision in light of the record evidence, we affirm the administrative law judge's denial of temporary total disability benefits from May 26, 1995, through July 16, 1995. It is claimant's burden to establish the nature and extent of his disability. *Trask v. Lockheed Shipbuilding & Constr. Co.*, 17 BRBS 56, 59 (1985). To establish his *prima facie* case of total disability, claimant must establish that he is unable to perform his usual employment due to his work-related injury. *Blake v. Bethlehem Steel Corp.*, 21 BRBS 49 (1988). In denying claimant temporary total disability benefits, the administrative law judge discussed the contrary opinions of Drs. McGinley and Crotwell. Dr. McGinley, claimant's treating physician, did not release claimant to work without restrictions until July 17, 1995. Dr. Crotwell, who examined claimant on behalf of employer, found that claimant was able to return to work without restrictions on May 25, 1995. Emp. Exs. 7, 8. After noting that the two physicians are both certified specialists, the administrative law judge was not persuaded that Dr. McGinley's opinion was entitled to greater weight as he did not supply an objective physical basis for his assigned restrictions of no lifting over 25 pounds prior to July 17, 1995. Moreover, the administrative law judge noted that both physicians had before them claimant's functional capacities evaluation which noted symptom exaggeration. Decision and Order at 3-4; Emp. Ex. 7. Thus, the administrative law judge acted within his discretion in denying benefits as claimant did not establish by a preponderance of the evidence that he was unable to work from May 26, 1995, through July 16, 1995. See *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 28 BRBS 43 (CRT)(1994); *Todd Shipyards Corp. v. Donovan*, 300 F.2d 741 (5th Cir. 1962); *Chong v. Todd Pacific Shipyards Corp.*, 22 BRBS 242 (1989), *aff'd mem. sub nom. Chong v. Director, OWCP*, 909 F.2d 1488 (9th Cir. 1990); Decision and Order at 3-4.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge